ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
shani@zakaylaw.com
Eden Zakay (State Bar #339536)
eden@zakaylaw.com
Jaclyn Joyce (State Bar #285124)
jaclyn@zakaylaw.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
jlapuyade@jcl-lawfirm.com
Perssia Razma (State Bar #351398)
prazma@jcl-lawfirm.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

ELIJAH MOON, on behalf of the State of California in Plaintiff's representative capacity as a private attorney general, Plaintiff, v. THERMAL OPERATING COMPANY, LLC dba THE THERMAL CLUB, a California limited liability company; and DOES 1-50, Inclusive, Defendants.	Case No: CVRI2503145 **REPRESENTATIVE ACTION COMPLAINT FOR:** 1) VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

PLAINTIFF ELIJAH MOON ("PLAINTIFF"), an individual, in PLAINTIFF'S representative capacity and on behalf of PLAINTIFF, the people of the State of California, and as an "aggrieved employee" acting as a private attorney general under the Labor Code Private Attorney General Act of 2004, Section 2699, *et seq.* ("PAGA") only, alleges on information and belief, except for PLAINTIFF'S own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF brings this action against Defendant THERMAL OPERATING COMPANY, LLC dba THE THERMAL CLUB ("DEFENDANTS") seeking only to recover PAGA civil penalties on behalf of all current and former aggrieved employees who worked for DEFENDANTS. PLAINTIFF does **not seek to recover anything other than penalties as permitted by California Labor Code Section 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code Section 2699.

2. California has enacted the PAGA which permits PLAINTIFF to bring an action on behalf of PLAINTIFF and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS' violations under PAGA and solely for the relief as permitted by PAGA that is, penalties and any other relief the Court deems proper pursuant to PAGA. Nothing in this complaint should be constructed as attempting to obtain any relief that would not be available in a PAGA- only action.

4. PLAINTIFF brings this representative action pursuant to PAGA on behalf of the Labor and Workforce Development Agency ("LWDA") and other current and former aggrieved employees of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code.

5. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

6. DEFENDANTS' systematic pattern of wage and hour and Industrial Welfare Commission ("IWC") Wage Order violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

a. Failure to provide compliant meal and rest periods;

b. Failure to allow employees to take duty-free meal and rest periods;

c. Failure to pay all minimum, sick pay, regular and overtime wages;

d. Failure to correctly calculate the regular rate of pay;

e. Failure to pay within seven (7) days of the close of payroll;

f. Failure to pay for all hours worked;

g. Failure to maintain true and accurate records;

h. Failure to reimburse for required business expenses;

i. Failure to provide accurate itemized wage statements; and

j. Failure to timely pay wages due during, and upon termination of employment.

7. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

THE PARTIES

8. Defendant THERMAL OPERATING COMPANY, LLC dba THE THERMAL CLUB ("DEFENDANTS") is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. DEFENDANTS were the employer of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company for which PLAINTIFF performed work.

10. DEFENDANTS own and operate a luxury motorsports country club in California, including in the County of Riverside.

11. PLAINTIFF was employed by DEFENDANTS in California from December of 2023 to November of 2024, as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

12. PLAINTIFF, and such persons who may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the PAGA, bring this Representative Action on behalf of the State of California with respect to PLAINTIFF and all individuals who are or previously were employed by DEFENDANTS in California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of March 28, 2024, and the present ("PAGA PERIOD").

13. PLAINTIFF is an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code Section 2699(c) because PLAINTIFF was employed by DEFENDANTS and personally suffered each of the alleged Labor Code violations committed by DEFENDANTS.

14. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code and the applicable IWC Wage Order.

15. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named Defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

16. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively "DEFENDANTS"), were PLAINTIFF'S employers or persons acting on behalf of PLAINTIFF'S employer, within the meaning of California Labor Code Section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the IWC and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code Section 558, at all relevant times.

17. DEFENDANTS were PLAINTIFF'S employer or persons acting on behalf of PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code Section 1197.1, who paid or caused to be paid to any

employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business and Professions Code, Section 17203. This Court has jurisdiction over AGGRIEVED EMPLOYEES' claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code Section 2698, *et seq*.

19. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

THE CONDUCT

20. In violation of the applicable sections of the California Labor Code and the requirements of the IWC Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for off-the-clock work, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses, and knowingly and intentionally failed to issue to PLAINTIFF and AGGRIEVED EMPLOYEES accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair

advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

A. <u>Meal Period Violations</u>

21. Pursuant to the IWC Wage Orders, DEFENDANTS were required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the PAGA PERIOD, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

22. During the PAGA PERIOD, as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time required to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, from time to time DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which DEFENDANTS require these employees to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other

AGGRIEVED EMPLOYEES were, from time to time, required to remain on premises, on duty and on call. Further, DEFENDANTS from time to time required PLAINTIFF and other AGGRIEVED EMPLOYEES to maintain cordless communication devices in order to receive and respond to work-related communications during what was supposed to be their off-duty meal breaks. DEFENDANTS' failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with legally required meal breaks is evidenced by DEFENDANTS' business records. PLAINTIFF and AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

B. <u>Rest Period Violations</u>

23. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons, these employees were from time to time denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, denied from time to time a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and denied from time to time a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to remain on premises, on duty and/or on call. Further, DEFENDANTS from time to time required PLAINTIFF and other AGGRIEVED EMPLOYEES to maintain cordless communication devices in order to receive and respond to work-related communications during what was supposed to be their off-duty rest breaks. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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C. Unreimbursed Business Expenses

24. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. California Labor Code Section 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

25. In the course of their employment, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to incur personal expenses as a result of and in furtherance of their job duties for the use of their personal cell phones. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use their own cell phones in order to perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell phones. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to, costs related to the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANTS.

D. Wage Statement Violations

26. California Labor Code Section 226 requires an employer to furnish its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee’s social security number or an

employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

27. From time to time during the PAGA PERIOD, when PLAINTIFF and other AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period, the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods, and any accrued sick pay.

28. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with California Labor Code Section 226(a)(1)-(9).

29. As a result, DEFENDANTS issued PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements that violate California Labor Code Section 226. Further, DEFENDANTS' violations are knowing and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

30. During the PAGA PERIOD, from time to time DEFENDANTS failed and continue to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours worked.

31. During the PAGA PERIOD, from time to time DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including but not limited to, sending and receiving work-related communications, perform work-related tasks, and performing keyholder duties. This resulted in PLAINTIFF and AGGRIEVED EMPLOYEES having to work while off-the-clock.

32. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

33. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

34. DEFENDANTS were able to track the amount of time PLAINTIFF and AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work they performed.

35. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees, subject to the requirements of the California Labor Code.

36. DEFENDANTS' policies and practices deprived PLAINTIFF and the other AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFF and AGGRIEVED EMPLOYEES typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

37. DEFENDANTS knew or should have known that PLAINTIFF and AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

38. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

F. <u>Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay</u>

39. From time to time during the PAGA PERIOD, DEFENDANTS failed and continues to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and

practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES at the correct rate for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

40. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." (Cal. Lab. Code § 510.) PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

41. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES' compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other AGGRIEVED EMPLOYEES' incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by DEFENDANTS.

42. From time to time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive

compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of California Labor Code Section 246 the underpayment of which is recoverable under California Labor Code Sections 201, 202, 203 and/or 204.

43. In violation of the applicable sections of the California Labor Code and the requirements of the IWC Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct overtime and double time compensation, meal and rest period premiums, and sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

G. <u>Sick Pay Violations</u>

44. California Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, DEFENDANTS failed to have a policy or practice in place that provided PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave. As of January 1, 2024, DEFENDANTS failed to adhere to the law in that they failed to provide and allow employees to use at least forty hours or five days of paid sick leave per year.

45. California Labor Code Section 246(i) requires an employer to furnish its employees with written wage statements setting forth the amount of paid sick leave available. From time to time, DEFENDANTS violated California Labor Code Section 246 by failing to furnish PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick leave available.

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H. Violations for Untimely Payment of Wages

46. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within the permissible time period.

47. Pursuant to California Labor Code Section 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to California Labor Code Section 202, if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of California Labor Code Sections 201 and 202. Further, DEFENDANTS' violations are willful and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

48. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose employment ended during the PAGA PERIOD.

I. Unlawful Deductions

49. DEFENDANTS, from time to time unlawfully deducted wages from PLAINTIFF and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code Section 221.

50. Specifically, During the relevant PAGA PERIOD, DEFENDANTS maintained a practice of reclassifying approved bereavement leave as paid time off ("PTO") without notifying or obtaining consent from employees, including PLAINTIFF and the AGGRIEVED EMPLOYEES. In or around August 2024, for example, Plaintiff requested and received

confirmation that a two-week bereavement leave had been approved and properly recorded as bereavement leave under Defendant's policies. However, shortly before the close of the pay period, Defendant unilaterally reclassified this time as PTO in the payroll system, thereby reducing Plaintiff's accrued PTO balance without authorization or advance notice.

J. <u>Unlawful Rounding Practices</u>

51. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

52. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

K. <u>Timekeeping Manipulation</u>

53. During the PAGA PERIOD, DEFENDANTS, from time to time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANTS

was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest break.

54. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time to time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

55. The mutability of the timekeeping system also allowed DEFENDANTS to alter employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED EMPLOYEES clocked out for thirty (30) minute meal breaks when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensating them for missed meal breaks.

56. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to them for all hours worked at DEFENDANTS' direction, control and benefit for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off-duty meal and rest breaks and was not fully relieved of duty for PLAINTIFF'S rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period each workday in which DEFENDANTS required PLAINTIFF to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-call for the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on premises, on-call and on-duty during what was supposed to be PLAINTIFF'S off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without

additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to comply with California Labor Code Section 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to the personal expenses incurred for the use of PLAINTIFF'S personal cell phone, on behalf of and in furtherance of PLAINTIFF'S employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to PLAINTIFF or any penalty wages owed to PLAINTIFF under California Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of $75,000.

<u>FIRST CAUSE OF ACTION</u>

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 *et seq*.)

(Alleged by PLAINTIFF against all DEFENDANTS)

57. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

58. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1.) Accordingly, PAGA claims cannot be subject to arbitration.

59. At all relevant times, for the reasons described herein and others, PLAINTIFF and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of Labor Code Section 2699(c).

60. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFF, on behalf of PLAINTIFF and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

61. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated March 26, 2025, PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See Exhibit #1.)

62. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA with notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)(A), PLAINTIFF may commence and is authorized to pursue this cause of action.

63. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and 2804 in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, up to ($200) per AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code Section 2699(f)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars ($250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars ($100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars ($200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars ($50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and one hundred dollars ($100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred ($500) dollars for each AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars ($100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty ($250) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 1197.1].

64. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code Section 2699(f) imposes upon DEFENDANTS a penalty of up to two hundred dollars ($200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

/ / /

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

1. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code Section 2699, *et seq.*;

2. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and

3. For such other relief as the Court deems just and proper.

Date: June 2, 2025

ZAKAY LAW GROUP, APLC

By:____________________
Eden Zakay
Attorney for PLAINTIFF

EXHIBIT 1

March 26, 2025

<u>Via Online Filing to LWDA and Certified Mail to Defendants</u>
Labor and Workforce Development Agency
Online Filing

THERMAL OPERATING COMPANY, LLC
dba THE THERMAL CLUB
c/o Frederick Gartside
10345 W. Olympic Blvd
Los Angeles, CA 90064
Sent via Certified Mail and Return Receipt No. 9589 0710 5270 2308 6663 05

Re: <u>Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5</u>

Dear Sir/Madam:

This notice is being sent in compliance with California Labor Code Section 2699.3. Our offices represent Plaintiff ELIJAH MOON("Plaintiff") and other aggrieved employees. Plaintiff was employed by Defendant THERMAL OPERATING COMPANY, LLC dba THE THERMAL CLUB ("Defendants") in California from December of 2023through November of 2024 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks.

Plaintiff alleges that within the past year, Plaintiff personally suffered violations of the following Labor Code Sections as a result of Defendants' failure to pay Plaintiff for all time worked, provide Plaintiff with compliant meal periods, provide Plaintiff with compliant rest periods, provide Plaintiff with accurate itemized wage statements that facially comply with the requirements provided for in Labor Code Section 226, furnish wages to Plaintiff with the frequency as set forth under Labor Code Section 204, and reimburse Plaintiff for necessary business expenses pursuant to Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804. These violations are actionable under California Labor Code Section 2699.3.

The information below provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. If the agency needs any further information, please do not hesitate to ask.

Plaintiff seeks to represent a group of aggrieved employees defined as any person currently or formerly employed by Defendants who performed work in California and against whom one or more of the alleged violations listed above were committed during the relevant claim

period ("Aggrieved Employees"). Plaintiff believes this group to be comprised of all current and former non-exempt employees who performed work for Defendants in California during the period beginning one year prior to the date of this Notice and continuing through the present.

In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate Plaintiff and other Aggrieved Employees for missed meal and rest periods, failed to pay Plaintiff and other Aggrieved Employees for all time worked, failed to compensate Plaintiff and other Aggrieved Employees for off-the-clock work, failed to pay Plaintiff and other Aggrieved Employees overtime at the correct regular rate of pay, failed to compensate Plaintiff and other Aggrieved Employees meal and rest premiums at the regular rate of pay, failed to pay Plaintiff and other Aggrieved Employees redeemed sick pay at the regular rate of pay, failed to reimburse Plaintiff and other Aggrieved Employees for business expenses, and failed to issue to Plaintiff and other Aggrieved Employees accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. Defendants' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows Defendants to illegally profit and gain an unfair advantage over competitors who comply with the law.

Meal Period Violations: Pursuant to the Industrial Welfare Commission Wage Orders, Defendants were required to pay Plaintiff and the Aggrieved Employees for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the last year, Defendants required Plaintiff and other Aggrieved Employees to work without paying them for all the time they were under Defendants' control. Specifically, Defendants required Plaintiff to work while clocked out during what was supposed to be Plaintiff's off-duty meal break. Indeed, there were many days where Plaintiff did not even receive a partial lunch. As a result, Plaintiff and other Aggrieved Employees forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. Defendants' uniform policy and practice not to pay Plaintiff and other Aggrieved Employees for all time worked is evidenced by Defendants' business records.

During the last year, as a result of their rigorous work schedules and Defendants' inadequate staffing practices, Plaintiff and other Aggrieved Employees were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during some shifts without receiving a meal break. Further, Defendants failed to provide Plaintiff and other Aggrieved Employees with a second off-duty meal period for some workdays in which these employees were required by Defendants to work ten (10) hours of work. The nature of the work performed by Plaintiff and other Aggrieved Employees does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, Plaintiff and other Aggrieved Employees were, from time to time, required to remain on duty and on call. Defendants' failure to provide Plaintiff and other Aggrieved Employees with legally required meal breaks is evidenced by Defendants' business records. As a result of their rigorous work schedules and Defendants' inadequate staffing, Plaintiff and other Aggrieved Employees therefore forfeited meal breaks without additional compensation and in accordance with Defendants' strict corporate policy and practice.

Rest Period Violations: From time to time during the past year, Plaintiff and other Aggrieved Employees were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and Defendants' inadequate staffing. Further, for the same reasons, these employees were from time to time denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, from time to time denied a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and from time to time denied and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. When they were provided with rest breaks, Plaintiff and other Aggrieved Employees were, from time to time, required to remain on premises, on duty and/or on call, and not fully relieved of all duties. Plaintiff and other Aggrieved Employees were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and Defendants' inadequate staffing, Plaintiff and other Aggrieved Employees were from time to time denied their proper rest periods by Defendants and Defendants' managers. For example, during the pay period of July 16, 2024 to July 31, 2024, Plaintiff was denied at least one rest period. However, as evidenced by the example below, Defendants failed to pay Plaintiff a rest period premium.

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	
4DQ	009837	008000	F	0000310140	1

Earnings Statement ADP

THERMAL OPERATING COMPANY
1983 W. 190TH STREET,SUITE 100
TORRANCE, CA 90504
(310)538-8000

Period Beginning: 07/16/2024
Period Ending: 07/31/2024
Pay Date: 08/05/2024

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

ELIJAH FITZPATRICK MOON
44125 TIARA PLACE
LA QUINTA CA 92253

Social Security Number: XXX-XX-5500

Earnings	rate	hours	this period	year to date
Regular	20.0000	87.35	1,747.00	
Overtime	30.0000	.70	21.00	
Paid Time Off				320.00
Gross Pay			$1,768.00	28,945.90

Deductions	Statutory	this period	year to date
	Federal Income Tax	-122.44	2,209.23
	Social Security Tax	-109.26	1,789.99
	Medicare Tax	-25.56	418.63
	CA State Income Tax	-37.97	750.17
	CA SDI Tax	-19.39	317.58
	Other		
	Supplemental In	-5.78*	75.14
	401-K $	-53.04*	155.37
	Net Pay	$1,394.56	
	Checking 1	-1,394.56	
	Net Check	$0.00	

* Excluded from federal taxable wages

Your federal taxable wages this period are $1,709.18

Other Benefits and Information	this period	total to date
401K Er	53.04	
Totl Hrs Worked	88.05	
Pto Bal		41.96

Important Notes
BASIS OF PAY: HOURLY

Additional Tax Withholding Information
Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Unreimbursed Business Expenses: Defendants as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the Plaintiff and other Aggrieved Employees for required business expenses incurred by the Plaintiff and other Aggrieved Employees in direct consequence of discharging their duties on behalf of Defendants. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. California Labor Code Section 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

Within the last year, in the course of their employment, Defendants required Plaintiff and other Aggrieved Employees to incur personal expenses as a result of and in furtherance of their job duties for the use of their personal cell phones. Specifically, Plaintiff and other Aggrieved Employees were required to incur personal expenses for the use of their personal cell phones in order to perform work related tasks. However, Defendants unlawfully failed to reimburse Plaintiff and other Aggrieved Employees for the personal expenses incurred for the use of their personal cell phones. As a result, in the course of their employment with Defendants, the Plaintiff and other Aggrieved Employees incurred unreimbursed business expenses that included, but were not limited to, costs related to the personal expenses incurred for the use of their personal cell phones all on behalf of and for the benefit of Defendants. For example, during the pay period of July 16, 2024 to July 31, 2024, Defendants required Plaintiff to use Plaintiff's personal cell phone. However, as evidenced by the example above, Defendants failed to reimburse Plaintiff for the use of Plaintiff's personal cell phone.

Wage Statement Violations: California Labor Code Section 226 requires an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. From time to time during the last year, when Plaintiff and other Aggrieved Employees missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, Defendants also failed to provide Plaintiff and other Aggrieved Employees with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period, and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Defendants also failed to provide Plaintiff and other Aggrieved Employees with complete and accurate wage statements that included all required elements listed above.

As a result, Defendants issued Plaintiff and other Aggrieved Employees with wage statements that violate California Labor Code Section 226. Further, Defendants' violations are knowing and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations: During the last year, from time-to-time, Defendants failed and continue to fail to accurately pay Plaintiff and other Aggrieved Employees for all hours worked. During the last year, from time-to-time Defendants required Plaintiff and other Aggrieved Employees to perform pre-shift or post-shift work. This resulted in Plaintiff and other Aggrieved Employees having to work while off-the-clock. Defendants directly benefited from the undercompensated off-the-clock work performed by Plaintiff and other Aggrieved Employees. Defendants controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of Plaintiff and other Aggrieved Employees.

Defendants were able to track the amount of time Plaintiff and other Aggrieved Employees spent working; however, Defendants failed to document, track, or pay Plaintiff and other Aggrieved Employees all wages earned and owed for all the work they performed. Plaintiff and other Aggrieved Employees were non-exempt employees, subject to the requirements of the California Labor Code. Defendants' policies and practices deprived Plaintiff and other Aggrieved Employees of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because Plaintiff and other Aggrieved Employees typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, Defendants' policies and practices also deprived them of overtime pay.

Defendants knew or should have known that Plaintiff's and other Aggrieved Employees' off-the-clock work was compensable under the law. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control, and benefit for the time spent working while off-the-clock, including but not limited to, undergoing pre-shift and post-shift work. Defendants' uniform policy and practice to not pay Plaintiff and other Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records.

Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay: From time to time during the last year, Defendants failed and continue to fail to accurately calculate and pay Plaintiff and other Aggrieved Employees for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. Defendants' uniform policy and practice not to pay Plaintiff and other Aggrieved Employees at the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by Defendants' business records.

State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." Plaintiff and other Aggrieved Employees were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance. The second component of Plaintiff's and other Aggrieved Employees' compensation was Defendants' non-discretionary incentive program that paid Plaintiff and other Aggrieved Employees incentive wages based on their performance for Defendants. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by Defendants. However, from time to time, when calculating the regular rate of pay in those pay periods where Plaintiff and other Aggrieved Employees worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonuses, Defendants failed to accurately include the non-discretionary bonus compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by Plaintiff and other Aggrieved Employees must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premium payments, and redeemed sick pay to Plaintiff and other Aggrieved Employees by Defendants.

Specifically, California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Defendants' conduct, as articulated herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of California Labor Code Section 246 the underpayment of which is recoverable under California Labor Code Sections 201, 202, 203, and/or 204.

In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate Plaintiff and other Aggrieved Employees at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as required by California law which allowed Defendants to illegally profit and gain an unfair advantage over competitors who complied with the law.

Unlawful Deductions: During the last year, Defendants, from time-to-time, unlawfully deducted wages from Plaintiff and Aggrieved Employees' pay without explanations and without authorization to do so or notice to Plaintiff and the Aggrieved Employees. As a result, Defendants violated Labor Code Section 221. Specifically, Defendants maintained a practice of reclassifying approved bereavement leave as paid time off ("PTO") without notifying or obtaining consent from employees, including Plaintiff and the Aggrieved Employees. In or around August 2024, for example, Plaintiff requested and received confirmation that a two-week bereavement leave had been approved and properly recorded as bereavement leave under Defendant's policies. However, shortly before the close of the pay period, Defendant unilaterally reclassified this time as PTO in the payroll system, thereby reducing Plaintiff's accrued PTO balance without authorization or advance notice.

Timekeeping Manipulation: During the last year, Defendants, from time-to-time, did not have an immutable timekeeping system to accurately record and pay Plaintiff and other Aggrieved Employees for the actual time Plaintiff and other Aggrieved Employees worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, Defendants were able to and did in fact, unlawfully, and unilaterally alter the time recorded in Defendants' timekeeping system for Plaintiff and other Aggrieved Employees in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks. As a result, Plaintiff and other Aggrieved Employees, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

The mutability of the timekeeping system also allowed Defendants to alter employee time records by recording fictitious thirty (30) minute meal breaks in Defendants' timekeeping system so as to create the appearance that Plaintiff and other Aggrieved Employees clocked out for thirty (30) minute meal breaks when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of Defendants' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensating them for missed meal breaks. As a result, Plaintiff and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control and benefit for the time the timekeeping system was inoperable. Defendants' uniform policy and practice to not pay Plaintiff and the Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records. Unlawful Rounding Practices: During the last year, Defendants did not have in place an immutable timekeeping system to accurately record and pay Plaintiff and other Aggrieved Employees for the actual time these employees worked each day, including overtime hours. Specifically, Defendants had in place an unlawful rounding policy and practice that resulted in Plaintiff and the Aggrieved Employees being undercompensated for all of their time worked. As a result, Defendants were able to and did in fact unlawfully and unilaterally round the time recorded in Defendants' timekeeping system for Plaintiff and the Aggrieved Employees in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, Plaintiff and other Aggrieved Employees, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

Further, the mutability of Defendants' timekeeping system and unlawful rounding policy and practice resulted in Plaintiff's and the Aggrieved Employees' time being inaccurately recorded. As a result, from time to time, Defendants' unlawful rounding policy and practice caused Plaintiff and other Aggrieved Employees to perform work as ordered by Defendants for more than five (5) hours during a shift without receiving an off-duty meal break.

Untimely Payment of Wages: Pursuant to California Labor Code Section 204, Plaintiff and the Aggrieved Employees were entitled to timely payment of wages during their employment. Plaintiff and the Aggrieved Employees, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within the permissible time period. Pursuant to California Labor Code Section 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to California Labor Code Section 202, if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Plaintiff and the Aggrieved Employees were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of California Labor Code Sections 201 and 202. To date, Defendants have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to them or any penalty wages owed to them under California Labor Code Section 203.

Sick Pay Violations: California Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, including within the last year, Defendants failed to have a policy or practice in place that provided Plaintiff and other Aggrieved Employees with sick days and/or paid sick leave. As of January 1, 2024, Defendants failed to adhere to the law in that they failed to provide and allow employees to use at least 40 hours or five days of paid sick leave per year. California Labor Code Section 246(i) requires an employer to furnish its employees with written wage statements setting forth the amount of paid sick leave available. From time to time, including within the last year, Defendants violated California Labor Code Section246 by failing to furnish Plaintiff and other Aggrieved Employees with wage statements setting forth the amount of paid sick leave available.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided in compliance with California Labor Code Section 2699.3, *et seq*.

If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

Shani O. Zakay
Attorney for Plaintiff